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markets” set forth in § 29.1(e), or additional sale; the location of other auction markets on which tobacco produced in the marketing area of the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale may be marketed; the number of tobacco growers to be affected by the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale; the volume of tobacco likely to be sold in the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale; the relationship of sales in the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale to sales in other auction markets in the producing area for that kind of tobacco; other economic factors affecting the marketing of tobacco, by growers, in the marketing area of the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale and in the producing area for that kind of tobacco, including limitations on sales imposed by any marketing agreement and/or order, or by any other means; and also, as to flue-cured tobacco, data with regard to producer designations which shall include, but not be limited to, the markets and warehouses currently available for the producers, who would be eligible to designate the new market or, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), who already designate and who desire to designate the new market.

(b) *Order of priority.* If the Secretary finds that there are insufficient qualified tobacco inspectors available to service adequately all applicants otherwise found to be qualified for additional inspection service pursuant to this subpart for a kind of tobacco, those applicants found to be eligible for additional services on auction markets designated for mandatory inspection shall be given priority over applicants for additional inspection service

on other auction markets. If it becomes necessary to determine which of several qualified applicants having an equal order of priority under the preceding sentence shall receive additional inspection and price support services, those auction sales or auction markets where the greatest number of growers needing such service may be served with the qualified inspectors shall have priority. If an application for an additional sale on a designated market is denied for lack of qualified inspectors, the Secretary, on application from such market, may temporarily suspend the requirement of inspection and certification on such market pursuant to section 5 of the Tobacco Inspection Act.

(c) *Price support services to be through warehouses.* Price support services on any auction market will be offered through tobacco auction warehouses operating in such market, and, notwithstanding any provision of this subpart, the offering of price support services through any auction warehouse located on any auction market will be conditioned upon a qualified, responsible warehouseman entering into an approved auction warehouse contract under the provisions of the applicable tobacco price support program, published at part 1464 of this title.

[37 FR 7765, Aug. 20, 1972, as amended at 42 FR 17097, Mar. 31, 1977; 46 FR 62393, Dec. 24, 1981]

§ 29.3 Procedures for filing, hearing, and determination of applications.

(a) *Time and place of filing.* Applications for the extension of tobacco inspection and price support services to new markets, to warehouses located beyond the geographical limitation for “designated markets” set forth in § 29.1(e) and to additional sales on designated markets shall be filed, in triplicate, with the Hearing Clerk not later than September 15 in the case of flue-cured tobacco, December 1 in the case of Maryland tobacco, and July 15 in the case of burley and all other kinds of tobacco. Applications should be addressed to the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250. Applications which are not received by the Hearing Clerk on or before the foregoing cutoff date for the

kind of tobacco shall be rejected as untimely filed. After denial of an application for additional inspection and price support services for a marketing season, no application from the same auction market or proposed new market shall be considered for the next consecutive marketing season, unless the application contains a statement by the applicant setting forth new facts that constitute evidence of such a substantial change in conditions since the previous hearing as the review committee as specified in paragraph (h) of this section deems would warrant such further hearing.

(b) *Form and content of application.* The application shall be in writing, shall set forth the grounds for the application and shall be signed by the applicant or applicants. If an applicant is a corporation, the application shall be executed by a responsible officer of such corporation. The application shall include a statement of the name, address and form of business organization of each party to the application and the location of the proposed new market or additional sale.

(c) *Hearings on applications.* Following the closing date for filing applications for each kind of tobacco, a hearing or hearings shall be held on the applications, if any, filed for additional inspection and price support services for the kind of tobacco in question. Such hearing or hearings shall be scheduled to begin within 60 days following the closing date for such applications. Notice of hearing shall be issued by the Secretary, filed with the Hearing Clerk, and published in the FEDERAL REGISTER, and a copy shall be mailed by the Hearing Clerk to each applicant. Such publication and mailing shall be not less than 5 days prior to the opening of the hearing.

(d) *Hearing officer.* A hearing officer shall preside over each such hearing. The hearing officer shall determine the order of procedure at the hearing, shall have power to administer oaths and affirmations, to rule on and admit evidence, and, following the opening of the hearing, to recess the hearing to such other times and places as he deems desirable or necessary.

(e) *Scope of hearing and burden of proof.* Each applicant shall have the

burden of presenting evidence relative to the factors specified in § 29.2(a).

(f) *Record and evidence.* The proceedings at each such hearing shall be transcribed verbatim. All oral testimony shall be under oath or affirmation. All documentary exhibits shall be submitted in triplicate by the person offering the same. The Hearing Officer shall, insofar as possible, exclude testimony and exhibits which are irrelevant, immaterial, or not of the sort upon which responsible persons are accustomed to rely. Cross-examination shall be allowed only to the extent that the Hearing Officer in his discretion deems it desirable or necessary to develop the material facts.

(g) *Briefs.* If requested at the hearing, the presiding officer shall fix a time, not to exceed 20 days from the close of the hearing, within which interested persons may mail briefs to the Hearing Clerk.

(h) *Certification and referral.* As soon as practicable following the close of the hearing, the Hearing Officer shall certify the transcript of the proceedings at the hearing together with all exhibits and shall transmit the same to the Hearing Clerk for referral to a review committee comprised of the Administrator, Agricultural Marketing Service, the Administrator, Agricultural Stabilization and Conservation Service, and a representative of the Office of the Secretary to be designated by the Secretary.

(i) *Recommended action.* The review committee shall review and consider the applications, hearing record, including exhibits, and all other available information and data relating to applications for each kind of tobacco and shall submit a recommendation thereon to the Secretary.

(j) *Final decision.* The Secretary shall issue the decision on each application and such decision shall be final: *Provided*, That any determination that additional services will be provided may be reconsidered and may be vacated if it is subsequently found that any material fact upon which such determination was based was materially erroneous or false, or that the new market or additional sale in question is not functioning as a bona fide auction sale. Such decision shall be filed with the

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Hearing Clerk who shall mail a true copy thereof, by certified mail, to the applicant.

[37 FR 7765, Apr. 20, 1972, as amended by 39 FR 3548, Jan. 28, 1974; 41 FR 24693, June 18, 1976; 42 FR 17098, Mar. 31, 1977; 46 FR 62393, Dec. 24, 1981]

Subpart B—Regulations

AUTHORITY: 7 U.S.C. 511m, 511r, and 511s.

SOURCE: 13 FR 9474, Dec. 31, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted.

DEFINITIONS

§ 29.12 Terms defined.

As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases hereinafter defined shall have the indicated meanings so assigned unless the context or subject matter otherwise requires.

§ 29.13 The act.

The Tobacco Inspection Act, approved August 23, 1935. (7 U.S.C. 511 *et seq.*)

§ 29.14 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 29.15 Department.

The U.S. Department of Agriculture.

§ 29.16 Division.

Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture.

§ 29.17 Director.

Director or Acting Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture.

§ 29.18 Person.

Individual, association, partnership, or corporation.

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§ 29.19 Inspector.

Person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

§ 29.20 Sampler.

Person employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco.

§ 29.21 Weigher.

Person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

§ 29.22 Appeal inspector.

An inspector or other person designated or authorized by the Division to hear appeals under the Act and the regulations in this subpart.

§ 29.23 Tobacco.

Tobacco in its unmanufactured forms as it appears between the time it is cured and stripped from the stalk, or primed and cured and the time it enters a manufacturing process. Conditioning, sweating, and stemming are not regarded as manufacturing processes.

§ 29.24 Official standards.

Standards for tobacco promulgated by the Secretary under the Act.

§ 29.25 Tentative standards.

Standards for tobacco prepared by the Division for trial purposes and limited use pending promulgation by the Secretary of Official Standards.

§ 29.26 Office of inspection.

A field office of the tobacco inspection service of the Division.

§ 29.27 Certificate.

A certificate issued under the Act and the regulations in this subpart.

§ 29.28 Interested party.

The owner or other financially interested person; including the warehouseman, commission merchant, association, and other person who has the tobacco in his custody for sale; the authorized agent of the owner; and persons to whom or by whom the tobacco